UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DEVON LETOURNEAU, Plaintiff, v. LINDA AUL, et al., Defendants.	: : : : : : :	C.A. No. 14-421M consolidated with
ROBERT VANGEL, Plaintiff, v. LINDA AUL, et al., Defendants.	: : : : : : :	C.A. No. 15-43M

REPORT AND RECOMMENDATION

Patricia A. Sullivan, United States Magistrate Judge.

These consolidated cases raise the rights of Plaintiffs, Devon Letourneau and Robert Vangel, to practice their "culture and way of life" called the Nation of Gods and Earths, ("NOGE") while incarcerated at the Adult Correctional Institutions ("ACI"), pursuant to the First Amendment and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1. After participating *pro se* in a court-annexed mediation conducted by this Court's Alternative Dispute Resolution Administrator (Berry B. Mitchell, Ph.D.), Plaintiffs and Rhode Island Department of Corrections ("RIDOC")[1] reached a settlement by which RIDOC

[1] The defendants named in Letourneau are Linda Aul, Billy Bogoanes, Lieutenant Sayles, Officer Duray and Director A.T. Wall, all employees of RIDOC. In Vangel, all defendants except Director Wall were eliminated at screening. C.A. No. 15-43M, ECF No. 4. Collectively, I refer to these defendants as "RIDOC" or "Defendants."

agreed to certain changes to its policy with respect to NOGE practice, as well as to other terms, while Plaintiffs agreed to, and did, dismiss their claims with prejudice. ECF No. 80-1 at 5-10.[2]

One month later, on April 28, 2017, Plaintiffs filed the first of three motions seeking relief from the order of dismissal with prejudice, pursuant to Fed. R. Civ. P. 60(b). ECF No. 80. Mistakenly believing that the first motion had been "intercepted by D.O.C. employees who conspired maliciously to further supress [sic] my efforts to re-open this case/access the courts,"[3] ECF No. 81, Plaintiffs filed the second iteration, essentially identical to the first, except that the exhibits already on file were not included. ECF No. 82. The third version also raised the same arguments, and differs from the first two only in that it is typed. ECF No. 85. All three motions ask the Court to "[f]acilitate an 'on record' Settlement Conference pursuant to Rule 16(a)(5) so that settlement may be reconstructed in 'good-faith.'" ECF Nos. 80 at 4, 82 at 4, 85 at 6.[4] Otherwise, the motions ask the Court to "lift the order of dismissal" and to afford to them their right to a trial. Id.

While the motions couch the issues in somewhat hyperbolic language, for example accusing Dr. Mitchell, the Court-assigned mediator, and the attorneys for Defendants of "not

[2] For ease of reference, after the cases were consolidated, all ECF numbers used in this report and recommendation refer to the docket entries in Letourneau, C.A. No. 14-421M.

[3] Operating in the information deficit of prisoners incarcerated at the ACI, and already paranoid about whether they had been duped during the mediation that resulted in the settlement, Plaintiffs misinterpreted an error made in the Clerk's Office of this Court (a copy of their first motion was not mailed to them as they had requested and their payment for copies was temporarily misplaced). Believing they had uncovered a clue that Defendants were trying to prevent them from accessing the Court to make a motion to vacate the settlement, Plaintiffs dramatically advised the Court that RIDOC employees "conspired maliciously" to suppress their filings, that "lies have short legs" and that "[t]ruth bearers hide nothing"; they requested that the Court "please look carefully." In response, the Court examined the objective facts in light of Plaintiffs' serious accusations that RIDOC and its counsel had engaged in wrongdoing. As the Court explicated in detail during the hearing on these motions, Plaintiffs' strongly worded accusation against RIDOC is simply wrong. Every one of Plaintiffs' filings reached this Court and was placed on the public record – nothing was suppressed. In short, the Court's investigation resulted in the finding that Defendants and their attorneys engaged in no wrongdoing.

[4] Hereafter, references to the three motions will be cited by reference to ECF No. 80, which is the first one that was filed. At the hearing, Plaintiffs agreed that all three versions are substantially identical.

participating in the (3-28-2017) Federal Mediation in 'Good-Faith,'" they raise three relatively simple concerns:

1. Plaintiffs were not given a copy of either of the Alternative Dispute Resolution Plan for the District of Rhode Island or of the briefing guidelines associated with the Plan, which they requested from Dr. Mitchell just before the mediation began;

2. Plaintiffs did not agree that the terms of the settlement were confidential yet it seemed to Plaintiffs that RIDOC was treating the settlement as confidential and was actively preventing other NOGE members or the public from knowing about it; and

3. The fully executed term sheet states that NOGE "is a religion and shall be accorded the same protections as any other religion," which is doctrinally inconsistent with the NOGE core belief that it is a "God-Centered Culture," and not a religion.

In their opposition to the motions, Defendants agreed with Plaintiffs that the terms of the settlement are not confidential. They also pointed out that the word "religion" in the term sheet is used in the legal sense to make clear that RIDOC will treat the practices of NOGE members as entitled to the same legal status as other religions pursuant to RLUIPA, and affirmed that RIDOC "has no intention to degrade Plaintiffs[']genuinely held beliefs." Defendants point out that upsetting a settled judgment clashes with the objective of finality and that such relief is considered extraordinary and reserved for exceptional, or significantly changed, circumstances. Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367, 384 (1992); see Abdullah v. Evolve Bank & Trust, No. CA 14-131 S, 2015 WL 4603229, at *5 (D.R.I. July 29, 2015) ("The solemnity with which the federal courts approach settlement agreements cannot be overstated.") (quoting Silicon Image, Inc. v. Genesis Microchip, Inc., 271 F. Supp. 2d 840, 846 (E.D. Va. 2003)).

The Court promptly set the matter down for a hearing on the motions, which was held on June 2, 2017. During the hearing, the Court facilitated a discussion between Plaintiffs and Defendants regarding the three issues raised by the motions. As to each, the Court proposed, and the parties agreed to accept, solutions that are described in more detail below. Based on the

foregoing, I find that Plaintiffs have been afforded the relief sought by the motions. To that extent, the motions were effectively granted. Otherwise, with no other relief sought and mindful of the duty of the federal courts to treat settlement agreements as "solemn undertakings," Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir. 1976), I recommend that Plaintiffs' motions be denied to the extent that they seek the remedy of vacating the dismissal of the case and placing it back on track to trial.

I. BACKGROUND

After Plaintiffs filed their separately initiated civil rights actions, focusing on the Vangel case, the Court first screened the complaint and then considered Defendants' motion to dismiss the claims. Vangel v. Aul, C.A. No. 15-cv-043-M-PAS, 2015 WL 710811 (D.R.I. Feb. 18, 2015) ("Vangel I"); Vangel v. Aul, No. CA 15-43L, 2015 WL 5714850, at *2 (D.R.I. June 19, 2015), adopted, C.A. No. 15-43L, 2015 WL 5714855 (D.R.I. Sept. 29, 2015) ("Vangel II"). In these decisions, the Court held that "Mr. Vangel does state allegations about [RIDOC] policy that he alleges violates his right to practice a religion," and that "Plaintiff has adequately pled that NOGE constitutes a religious belief or practice within the meaning of the First Amendment and RLUIPA." Vangel I at *2; Vangel II at *6. With guidance from the Court, Plaintiffs both succeeded in filing amended complaints that Defendants did not challenge pursuant to Fed. R. Civ. P. 12(b)(6). After the pleadings were closed, the Rule 16 conference was conducted; the cases were consolidated on September 17, 2015. Following the Court's order to show cause regarding appointment of counsel, which was entered on September 24, 2015, in December 2015, the Court appointed *pro bono* counsel, in accordance with the Court's *Pro Bono* Plan, to litigate Plaintiffs' claims for injunctive and declaratory relief, but not the claims for monetary damages. See Text Order of Dec. 9, 2015; Text Order of Dec. 23, 2015.

Ten months later, the Court held a chambers conference with the *pro bono* panel attorneys for Plaintiffs and counsel for Defendants. Based on the discussion at the conference, the dispute was referred to me for mediation. However, that process was arrested by a dramatic letter from Mr. Letourneau accusing Plaintiffs' *pro bono* panel attorneys of being "untruthful" and claiming that Plaintiffs were having "trouble trusting" them; as a result, the appointed counsel withdrew. *Pro se* again, Plaintiffs advised the Court that they remained ready and eager to participate in a court-annexed mediation, which their counsel had been working on before they withdrew. As a result, a second referral for mediation was entered, this time with Dr. Mitchell serving as mediator.

Dr. Mitchell conducted the mediation on March 28, 2017; it was an in-person session, held at the ACI for the benefit of Plaintiffs. The mediation resulted in a written "term sheet" that summarized the parties' agreement; it was reviewed, modified at the request of Plaintiffs, and ultimately signed by all parties. ECF No. 80-1 at 7. The parties also signed a stipulation of dismissal with prejudice. ECF No. 80-1 at 9. In addition, the parties signed a single Release and Settlement of All Claims ("Release") for the consolidated cases; the term sheet was attached and incorporated by reference in the Release. ECF No. 80-1 at 5. After the mediation concluded, the stipulation of dismissal was filed with the Court and entered the next day, terminating the action. ECF No. 79; Text Order of Mar. 29, 2017. As is customary unless the parties agree otherwise, the Release with the attached term sheet was not filed with the Court.

II. ANALYSIS

A. Disclosure of ADR Plan and Guidelines

Plaintiffs claim that Dr. Mitchell did not participate in the mediation in good faith because he refused Mr. Letourneau's request to review the Court's ADR Plan prior to the mediation. ECF No. 80 at 1-2.

The ADR Plan, together with related materials, is publicly available on the Court's website. See http://www.rid.uscourts.gov/menu/generalinformation/adr/adr.html. For the most part, its content is of little significance to participants in a court-annexed mediation; for example, it memorializes the Court's commitment to facilitating mediation, creates the protocol for the Court's panel of neutral mediators and very generally describes procedures for the various ADR options (of which mediation is one) suggested by the Plan. Based on the foregoing, copies of the Plan are not sent to the parties to a mediation. However, the Order referring this case to Dr. Mitchell for mediation referred to the Plan and purported to require participants in the mediation to submit briefs based on the guidelines associated with the Plan, which are available only on the Court's website. ECF No. 76. For Plaintiffs, incarcerated prisoners with no internet access, this created a problem because they were ordered to prepare mediation briefs yet could not access the website where the instructions for doing so could be found. To solve the problem, they directed a request to Dr. Mitchell to provide them with a copy of the Plan and the guidelines, which he received shortly before the mediation was scheduled to begin. Responding quickly, Dr. Mitchell asked RIDOC to inform Plaintiffs that he would not "forward a copy of the ADR rules to Mr. Letourneau prior to tomorrow's mediation," but that no written mediation brief would be required. ECF No. 80-1 at 3. As a result of these events, Plaintiffs had been served with an Order which referred to the Plan and related guidelines, but their request for a copy was denied, raising understandable concerns that the process was somehow rigged against them.

Based on the Court's colloquy with Plaintiffs during the hearing, I find that there is nothing in the Plan or the guidelines that permits the conclusion that Plaintiffs were adversely impacted by Dr. Mitchell's failure to get a copy to them in advance of the mediation or to provide them with a copy during the mediation. Further, and importantly, the Court finds no lack of good faith by Dr. Mitchell – to the contrary, his commitment to mediate cases with *pro se* litigants, including his willingness to travel to the ACI so that *pro se* prisoners like Plaintiffs may have the opportunity to participate in mediation in person, represents the apex of public service. To be clear, I find that Plaintiffs' accusation of bad faith directed at Dr. Mitchell is utterly unfounded.

Nevertheless, I also find that Plaintiffs brought to the Court's attention an important gap in the protocols of the Court's ADR program, which is deployed from time to time to the significant benefit of inmates incarcerated at the ACI. Following the hearing, this gap was addressed in two ways. First, to eliminate the mystery about the Plan and the related guidelines for Plaintiffs, I ordered counsel for Defendants promptly to deliver copies to Plaintiffs by June 9, 2017. Text Order of June 2, 2017. Second, the Court has been advised that a copy of the Plan and related materials are now available to all ACI inmates in RIDOC's legal library.

B. Confidentiality of Settlement Term Sheet

Plaintiffs accuse Dr. Mitchell and RIDOC's attorneys of bad faith based on the claim that they shared "intentions to keep the matter of 'Settlement' CONFIDENTIAL and 'SECRET' from Rhode Island prisoner and public alike," even though Plaintiffs "did not swear to secrecy or confidentiality." ECF No. 80 at 2-3. Plaintiffs allege that they relied on Dr. Mitchell's representation that this settlement could be used by NOGE in other parts of the country. ECF No. 80 at 3. Plaintiffs' motions express their fear that RIDOC seemed to be planning to apply

the term sheet only to them and "not [to] any Rhode Island prisoner seeking to embrace the 'NOGE-God-Centered Culture.'" ECF No. 80 at 3.

Plaintiffs have a two-part foundation for their fear. First, on April 11, 2017, RIDOC sent Plaintiffs a memorandum advising them of the timing of the deposit of the monetary compensation called for by the settlement. With reference to deposits in Plaintiffs' accounts, this memorandum was (appropriately) headed "Confidential"; however, the use of this heading caused concern for Plaintiffs. They also focused on the statement in the memorandum that, "the term sheet did not provide that a memo would be distributed or would be posted in any of the facilities," although the memorandum also assured Plaintiffs that the ACI assistant director "is meeting with all facility Wardens to apprise them of this settlement and your culture will be acknowledged as a religion." ECF NO. 80-1 at 4. Second, Plaintiffs learned that the stipulation of dismissal had been publicly filed but, contrary to their expectation, the Release and term sheet had not. During the mediation, the parties specifically agreed that the terms of the settlement were not confidential; however, doubtless because Plaintiffs were unaware that a document like the Release is not customarily filed unless the parties specifically agree to do so, they had not discussed whether it (and the attached term sheet) would be filed with the Court.

In response, Defendants have been crystal clear – this settlement is not confidential. ECF No. 83 at 4. Importantly, the Release and term sheet are now in the public domain because Plaintiffs have filed them. Defendants have made no objection to the filing. At the hearing, Plaintiffs advised the Court that their remaining (and legitimate) concern is their lack of information regarding how RIDOC is planning to implement the settlement. Specifically, Plaintiffs want to be able to advise other members of NOGE what aspects of practice would now

be permissible and to provide information to NOGE leadership about what is now being done in Rhode Island.

To resolve this problem, while mindful that the Court should not interfere with RIDOC's discretion regarding how to develop orderly procedures and protocols to implement the term sheet, the Court ordered Defendants to file:

> [A] statement of clarification that generally advises the Court regarding the plan for implementation of the Term Sheet, in light of RIDOC's clear intent that the Term Sheet is applicable to all adherents of the NOGE belief system so that each may be aware of the elements of practice permissible in light of the Term Sheet.

Text Order of June 2, 2017. On June 16, 2017, Defendants complied and filed an "informational filing"[5] that sets forth appropriate procedures for good faith implementation of the term sheet, including communication of the new opportunities for practice of NOGE to NOGE members. ECF No. 87. Further, with the public filing of the term sheet and of the informational filing about RIDOC's plan for implementation, Plaintiffs now know what is being done to implement the term sheet and NOGE leadership can use the term sheet to assist members in other states who are seeking permission to practice their beliefs.

With these filings, I find that Plaintiffs' concern that the term sheet is being suppressed or inappropriately kept confidential from all but Plaintiffs themselves was the result of a misunderstanding. I further find that Defendants are proceeding with implementation of the settlement in good faith, consistent with its terms.

C. Reference to NOGE as Religion

[5] To be clear, neither the term sheet nor the Orders of this Court are directive with respect to what RIDOC must do to implement the settlement. RIDOC remains free to use its own discretion regarding how to proceed consistent with institutional safety and security. And Plaintiffs have no contractual right to mandate specific actions or steps, such as the right to alter the wording of memoranda prepared by RIDOC for posting in specific locations.

Plaintiffs contend that the term sheet's reference to NOGE as a religion is "not only unacceptable to said Nation but falls nothing short of degradation, as the term 'religion' violates the fundamental tenants of the 'God-Centered-Culture.'" ECF No. 80 at 4. They assert that, while the practice of NOGE members should be accorded the same protections granted religions, it is unacceptable to refer to their practice as a religion. ECF No. 80 at 4. Defendants respond that the reference to NOGE as a religion is only in the legal sense and that the designation of NOGE as a religion is essential to the settlement in that "religion" is the category entitled to protection. Put differently, if NOGE members are categorized as a "culture," they will not be entitled to the protections afforded by RIDOC to a "religion," as required by RLUIPA and the First Amendment. See Frazee v. Ill. Dep't of Emp't Sec., 489 U.S. 829, 833 (1989). Consistent with Defendants' argument, the Court's decision that launched this case on the path to this settlement specifically holds that, "NOGE constitutes a religious belief or practice within the meaning of the First Amendment and RLUIPA," as well as that "NOGE's aversion to the word 'religion' is a matter of semantics; the real issue is whether NOGE has the indicia of a system of religious belief or practice," and is consequently governed by RILUPA. Vangel II at *6 (citing cases).[6]

Based on the foregoing, I find that the uses of the word "religion" in connection with the term sheet and the settlement that have been brought to the Court's attention do not denigrate or contradict the doctrinal belief system of NOGE, which posits that its belief system is not a

[6] See, e.g., Joseph v. Fischer, 900 F. Supp. 2d 320, 325 (W.D.N.Y. 2012) (plaintiff eschewed "religion," but court found NOGE should be considered religious); Wright v. Fayram, No. C11-0001, 2012 WL 2312076, at *12 (N.D. Iowa June 18, 2012) (same); Marria v. Broaddus, No. 97 Civ.8297 NRB, 2003 WL 21782633, at *11-12 (S.D.N.Y. July 31, 2003) (same); see also Hardaway v. Haggerty, No. 05-70362, 2010 WL 1131446, at *2-3 (E.D. Mich. Mar. 22, 2010) (based on expert affidavits, court determines NOGE ideology is religious).

religion. Nevertheless, during the hearing, after colloquy with Plaintiffs regarding language that would be acceptable to them, the Court entered the following clarifying text order:

> [I]t is hereby ordered that the term "religion" as used in the Term Sheet setting forth the parties' settlement agreement . . . shall mean and be interpreted as meaning that the "Nations of Gods and Earths" ("NOGE") has the indicia of a system of religious belief or practice, but is not a religion.

Text Order of June 2, 2017. With this text order, the public record is crystal clear that NOGE is not doctrinally a religion, but is to be treated as a religion by RIDOC pursuant to the settlement.[7]

III. CONCLUSION

As noted, the Court has fully afforded Plaintiffs the relief they sought by facilitating an "'on record' Settlement Conference" that has resulted in the adjustments and clarifications laid out above. Based on the foregoing, to the extent that Plaintiffs' three motions (in C.A. No. 14-421M, ECF Nos. 80, 82, 85; in C.A. No. 15-43M, ECF Nos. 69, 72, 73) seek to vacate the settlement agreement, I recommend that they be denied.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
June 30, 2017

[7] Plaintiffs are cautioned not to be reactive to RIDOC's use of the term "religion" in the legal sense as a short-hand reference to the protected category in which NOGE is classified.